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17 UNITED STATES DISTRICT COURT
18
19 NORTHERN DISTRICT OF CALIFORNIA

20 All Nippon Airways Company, Ltd.,

21 Case No. 07-03422 EDL

22 Plaintiff,

23 **DECLARATION OF SCOTT TORPEY
PURSUANT TO ORDER DATED
FEBRUARY 14, 2008**

24 vs.

25 United Air Lines, Inc.,

26 DATE: -----

27 Defendant.

28 TIME: -----

CTR: -----

JUDGE: Elizabeth D. Laporte

29 **DECLARATION OF SCOTT TORPEY**

30 **STATE OF MICHIGAN**)

31) SS.

32 **COUNTY OF OAKLAND**)

33 I, Scott Torpey, being duly sworn according to law, hereby state:

1 1. I am a partner at the law firm of Jaffe Raitt Heuer & Weiss, P.C., in Southfield
 2 Michigan. I am duly licensed and qualified to practice law in California. I represent Defendant
 3 United Air Lines, Inc., ("United") in the above-captioned matter, which All Nippon Airways
 4 Company, Ltd., ("ANA") filed against United on June 28, 2007. I make this Declaration
 5 pursuant to the Court's Order Granting United's Motion for Administrative Relief, dated
 6 February 14, 2008.

7 2. United has diligently searched its records for documents responsive to ANA's
 8 First Set of Document Requests to United, ANA's Second Set of Document Requests and the
 9 document requests contained in the notices of deposition of Scott Russell, Brad Powell, John
 10 Rediger, Julio Hernandez, and Edward Loh ("Discovery Requests"), and has in good faith
 11 produced documents responsive to these requests. Further, as set forth in greater detail below,
 12 United has agreed to produce additional responsive documents.

13 3. I met and conferred with counsel for ANA on February 18, 2008 in an attempt to
 14 narrow the issues raised in ANA's Motion to Compel, which was stricken by the Court pursuant
 15 to United's Motion for Administrative Relief. This meet and confer resulted in the resolution of
 16 most of the issues raised in the Motion, as discussed below. Further, the parties have agreed to
 17 conduct another meet and confer on February 27, 2008 to permit United to search for additional
 18 responsive documents and to further narrow the issues.

19 4. The parties have an ongoing dispute regarding production of their internal
 20 investigation files. United requested this information from ANA, which objected on the basis of
 21 "self critical analysis" and for other reasons, and has refused to produce any internal
 22 investigation documents. Moreover, ANA disingenuously asserted in a prior filing that it had
 23 already produced these materials, pointing to the information it produced as part of its Fed. R.
 24 Civ. P. 26(f) disclosures. This information was submitted to the National Transportation Safety
 25 Board in connection with its investigation and is now public record. ANA's internal memoranda
 26 and other investigation documents objected to comprising its own investigation file were not part
 27

1 of those materials. ANA knows precisely what United is looking for, but refuses to produce it.
2 During the February 18, 2008 meet and confer, I stated that either both parties should produce
3 their internal investigation files or neither party should produce its file since United's objections
4 were copied verbatim from those of ANA who previously asserted them to the very same
5 document request ANA's counsel would not agree. This issue will likely be the subject of
6 further discussion at the meet and confer scheduled for February 27, 2008 and if need be, the
7 motion hearing on March 11, 2008.

8 5 Several of ANA's document requests would require the production of materials
9 found in United's internal investigation file. As described above, this issue has not been
10 resolved. Subject to this limitation, United states the following regarding ANA's First Set of
11 Document Requests:

- 12 (a) United has produced all documents in its possession and control
13 responsive to Request Nos. 1-5, 8, 16, 20, 26, 27-29, 30-33;
- 14 (b) United will produce documents responsive to Request No. 6 upon
15 obtaining the consent of Julio Hernandez to release his personnel file;
- 16 (c) United will produce documents responsive to Request No. 7 upon
17 obtaining the consent of Richard Kato to release his personnel file;
- 18 (d) United is searching for the records of the urine sample testing for Edward
19 Loh and will produce those records when located. United has no other documents
20 responsive to Request Nos. 9-11;
- 21 (e) United does not have any documents responsive to Request No. 12;
- 22 (f) In response to Request No. 13, United will search for and produce records
23 related to ground collisions prior to the subject accident and similar to the incident
24 involved in this litigation, if any;
- 25 (g) United does not have any documents responsive to Request No. 15;
- 26 (h) United has produced all documents responsive to Request No. 17, except

1 for the Turns Report, which will be produced subject to "Attorneys Eyes Only"
2 confidentiality.

3 (i) United has produced materials responsive to Request No. 18 and will
4 produce the following additional documents, Hand Signals-UA Approved, Variance
5 Request/Approval Form MOP 03-001-00, Receiving and Dispatching - General, and
6 MOP 03-001-10, Receiving and Dispatching - All Airplanes. United has no other
7 documents responsive to this request.

8 (j) United has produced documents related to the parties Standard Ground
9 Handling Agreement, and will search for and produce documents responsive to Request
10 Nos. 19, 21 and 34-40, if any exist. It is likely that no additional documents exist. In any
11 event, this matter will be addressed at the meet and confer scheduled for
12 February 27, 2008.

13 (k) United has produced materials responsive to Request Nos. 22 and 23 and
14 will produce the following additional documents, Hand Signals-UA Approved, Variance
15 Request/Approval Form MOP 03-001-00, Receiving and Dispatching - General, and
16 MOP 03-001-10, Receiving and Dispatching - All Airplanes. United has no other
17 documents responsive to this request.

18 (l) With respect to Request No. 24, all documents responsive to Request 24
19 (UAL manuals and documents that refer to taxiing have been produced as part of the
20 UAL Operations Manual.

21 (m) With respect to Request No. 25, United produced, in its entirety, the
22 Operations Manual that was in effect on the date of the collision involved in this
23 litigation. United has also agreed to produce, in its entirety, the current version;

24 (o) We agreed during the February 18, 2008 meet and confer that Request
25 Nos. 41 and 42 were overbroad and asked for irrelevant information. United has
26 produced all documents regarding the damage its aircraft suffered in this collision and all
27

1 documents reflecting the repairs that were made. Counsel for ANA agreed that this was
2 sufficient

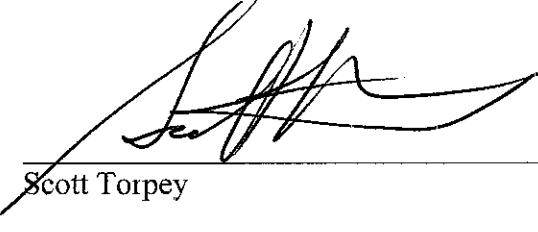
3 (6) With the exception of Request Nos. 28-30, ANA's Second Set of Document
4 Requests is duplicative of its First Set of Document Requests. For United's responses to Request
5 Nos. 1-27, see ¶ 5.

6 (a) With respect to Request Nos. 28 and 29, United has no objection to
7 producing this information and will do so when these documents, if any, are located.

8 (b) Regarding Request Nos. 30 and 31, United has agreed to produce
9 responsive documents.

10 (7) The documents requests contained in the deposition notices are duplicative of the
11 information requested in United's First Set of Document Requests regarding the employees. For
12 United's responses to these document requests, see ¶ 5

14 **FURTHER AFFIANT SAYETH NOT.**



15
16
17 Scott Torpey

18 Subscribed and sworn to before me
this 20th day of February, 2008

20 
21 Notary Public, Wayne County, MI
22 My Commission Expires: _____

23 Acting in Oakland County, MI

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28
PHYLIS L. NELSON
NOTARY PUBLIC, WAYNE COUNTY, MI
MY COMMISSION EXPIRES DECEMBER 22, 2013
ACTING IN OAKLAND COUNTY